

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Danny Flanders Austin,)
Petitioner,) C/A No. 8:12-2670-TMC
v.)
Warden Leroy Cartledge,)
Respondent.)

ORDER

Petitioner, a state prisoner proceeding pro se, filed this habeas petition pursuant to 28 U.S.C. § 2254. This matter is before the court for review of the Report and Recommendation of the United States Magistrate Judge Jacquelyn D. Austin made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina (“Report”).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

On December 12, 2012, Respondent moved for summary judgment. (Dkt. No. 16.) Petitioner was advised of his right to respond to Respondent’s motion on December 13, 2012, (Dkt. No. 17), and again on January 23, 2013 (Dkt. No. 20). Additionally, Petitioner was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. However, Petitioner still failed to respond.

Accordingly, the Magistrate Judge filed a Report, recommending that this action be dismissed for lack of prosecution. (Dkt. No. 22.) The Petitioner was advised of his right to file objections to the Report. (Dkt. No. 22-1). However, the Petitioner has not filed objections and the time for doing so has run.

In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. See *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation (Dkt. No. 22) and incorporates it herein. It appears the Petitioner no longer wishes to prosecute this action. It is therefore **ORDERED** that the action is **DISMISSED with prejudice** for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
March 15, 2013

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.